

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

GARVEY SCHOOL DISTRICT AND SAN  
MARINO UNIFIED SCHOOL DISTRICT.

OAH Case No. 2014080320

ORDER GRANTING MOTION TO  
DISMISS ISSUE A

On August 3, 2014, Parents on behalf of Student filed a Request for Due Process Hearing (complaint), naming the Garvey School District and the San Marino Unified School District as respondents.

On September 3, 2014, San Marino filed a Motion to Dismiss Issue “A,” alleging that the Office of Administrative Hearings is without jurisdiction to hear claims based on Section 504 of the Rehabilitation Act of 1973 and Section 1983 of Title 42 of the United States Code.

OAH received no response from Student to San Marino’s motion.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education” (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) Thus, OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), the Americans with Disabilities Act, or Section 1983 of title 42 United States.

## DISCUSSION

Student's complaint contains five issues labeled as Issues "A" through "E." Issue A contends that San Marino is in violation of Section 504 or the ADA by failing to provide behavioral services due to discrimination based on Student's disability.<sup>1</sup> As stated earlier, OAH does not have jurisdiction to hear claims based on Section 504 or the ADA.

San Marino's Motion to Dismiss Issue "A," is GRANTED. Because OAH lacks jurisdiction to hear the allegations in Issue "A," Issue "A" is also dismissed as to Garvey on OAH's motion. The matter will proceed to hearing as to the remaining issues.

IT IS SO ORDERED.

DATE: September 16, 2014

/s/

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ROBERT HELFAND  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>1</sup> Student also alleges a denial of FAPE for failure to provide behavioral services under the IDEA in Issue C.